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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 92-77
Billed Party Preference for	)	
InterLATA 0+ Calls	)	

AMERITECH PETITION
FOR CLARIFICATION OR RECONSIDERATION

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Pursuant to section 1.429 of the Commission's rules, the Ameritech Operating Companies (Ameritech) respectfully file this Petition for Clarification or Reconsideration of the Second Report and Order *(Second Report)* in the above-captioned proceeding.[1] Concurrent with this request, Ameritech is filing an Emergency Request for Stay of that order.

I. INTRODUCTION AND SUMMARY

In the *Second Report*, the Commission amended its rules to require operator service providers (OSPs) by July 1, 1998, to "[d]isclose audibly and distinctly to the consumer, at no charge and before connecting any interstate, domestic, interexchange 0+ call, how to obtain the total cost of the call, including any aggregator surcharge, or the maximum possible total cost of the call, including any aggregator surcharge, before providing further oral advice to the consumer on how to proceed to make the call." The Commission held, further,

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[1] *Billed Party Preference for InterLATA 0+ Calls*, CC Docket No. 92-77, Second Report and Order and Order on Reconsideration, FCC 98-9, released January 29, 1998.

that consumers must be permittted to obtain applicable rate and surcharge quotations by dialing no more than two digits or by remaining on the line.

Ameritech now asks that the Commission clarify or rule on reconsideration that this rate disclosure requirement does not apply to 0+ interstate intraLATA service. As discussed below, Ameritech believes that the Commission did not intend, or certainly should not have intended, to apply the notification requirement adopted in the *Second Report* to intraLATA toll services insofar as: (i) the Commission did not even discuss intraLATA toll services in this proceeding - much less explain why any of its proposals should apply to such services; and (ii) application of this requirement to 0+ interstate, intraLATA toll services, which are provided exclusively by Bell operating companies (BOCs) in their regions would be completely superfluous, since consumers are already protected from excessive rates for those services under the Commission's price cap regime. Moreover, to the extent the *Second Report* could be taken to require carriers to quote actual or maximum surcharges or premises-imposed fees (PIFs) for which a carrier does not bill or which are not expressly addressed in any contract, Ameritech (and undoubtedly others) *cannot* comply.

Application of this requirement to intraLATA toll services would also undermine the Commission's goal of promoting competition in telecommunications markets. Under section 251(b) and (c) local exchange carriers (LECs) must make their operator-based services available for resale.

Incumbent LECs (ILECs) must also provide access to operator services as network elements.[2] Because other carriers, including so-called competitive LECs (CLECs) thereby use Ameritech's operator services (and the operator services of other LECs as well), Ameritech operators can only provide accurate rate information to consumers if they know the carrier that the consumer is using. Unless, however, a call comes in on a trunk group dedicated to a particular carrier, Ameritech operators do not currently know this information. Moreover, this is as it should be insofar as this minimizes any possibility or appearance of discrimination. In order to comply with the rate disclosure requirement, therefore, Ameritech operators would have to ask customers to identify their 0+ carrier. Even worse, in order for carriers that use Ameritech's operator services to meet their own rate disclosure requirements, those carriers would have to either: (i) provide Ameritech (their competitor) with rate tables; or (ii) direct Ameritech to transfer each call to them. Neither option, however, serves the interest of fair and robust competition. Obviously, a requirement that effectively forces some carriers (typically new entrants and smaller carriers) to share their rates with their competitors would be extraordinarily anticompetitive in design and effect.[3] The second option, however, is also unsatisfactory, since,

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[2] Interexchange carriers (IXCs) must also make their services available for resale, and the problem described below may afflict the interexchange industry, as well as the LEC industry. To the extent that this is true, the Commission may need to rethink the application of the *Second Report* altogether.

[3] *See Policy and Rules Concerning the Interstate Interexchange Marketplace, Order on Reconsideration*, CC Docket No. 96-61, FCC 97-293, released August 20, 1997 (prohibiting nondominant IXCs from filing tariffs on ground that, *inter alia*, tariffs facilitate tacit price

once a caller was transferred to the 0+ carrier for rate information, the caller would have to resubmit all of the information (*e.g.* the dialed number) to the 0+ carrier, and then, after receiving a rate quote, if the caller chose to proceed, he/she could not complete the call without hanging up and redialing. Thus, the very purpose of the rule adopted in the *Second Report* - to permit consumers to obtain rate information without making a separate phone call - would be defeated. Moreover, LECs with their own operators (typically ILECs) would have a built-in advantage over other LECs, since ILEC customers would be able to obtain rate information from the ILEC operator, while CLEC customers would be subject to more cumbersome processes.

These issues are discussed more fully below. First, however, Ameritech sets forth in some detail the background for the *Second Report*. Ameritech provides this detailed history because it demonstrates two critical facts: (i) problems in the operator services industry - and legislative and regulatory responses to those problems - have been confined to the interLATA marketplace; and (ii) neither the Commission nor the parties to this proceeding focused on, or even discussed, intraLATA services at any point prior to the issuance of the *Second Report* in this proceeding.

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coordination. Obviously, if *tariffs* can have anticompetitive effects, a requirement that effectively forces carriers to turn over their rate tables and surcharge information to their competitors would be even more anticompetitive. The fact that it would be only the smallest carriers (those without their own operators) that would have to turn over this information makes the requirement even more problematic from a public policy standpoint.

II. BACKGROUND

The *Second Report* is the latest in a series of consumer protection measures that Congress and the Commission have taken during the past decade to address abuses in the operator service industry. These abuses first began to occur in the late 1980s when so-called "alternate operator service" (AOS) providers entered the operator service marketplace by competing with AT&T for presubscription contracts from aggregator locations.[4] AOS providers were able to secure presubscription contracts from aggregator locations by offering commission payments to aggregators on 0+ interLATA traffic. Because their competitive efforts were directed at aggregators, not at consumers, AOS companies provided little, if any, benefit to consumers. Indeed, to the contrary, their entry into the market generated a wave of consumer abuses, in the form of excessive rates and unreasonable practices, such as access code blocking.

In 1988, the Telecommunications and Research Action Center (TRAC) and Consumer Action, two consumer groups, filed a formal complaint at the FCC against five AOS providers. Among other things, the complainants alleged that the interstate interLATA rates of these AOS providers were unjust and unreasonable, and they asked the Commission to regulate AOS providers as dominant carriers under the Commission's *Competitive Carrier* regime. They also

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[4] In response to AOS provider complaints that the term "alternate operator service" implied second-rate status, the Commission abandoned the term AOS provider in favor of the term OSP.

asked the Commission to rule that the blocking of access codes by the defendant AOS providers or their aggregator customers was unlawful.

The Commission granted their complaint in part, holding that access code blocking was an unreasonable practice under section 201(b) of the Act and ordering the defendant AOS providers to cease such actions. The Commission, however, rejected complainants' rate complaint, and it rejected their request that AOS providers be treated as dominant carriers under Commission rules, holding that any such change in status could only be effected through a rulemaking proceeding.[5]

The *TRAC Order* did little to stem the wave of consumer complaints about AOS provider rates and practices. Therefore, in order more effectively to address the abuses of the AOS provider industry, Congress enacted the Telephone Operator Consumer Services Improvement Act (TOCSIA). The stated purpose of that legislation was "to protect consumers who make interstate operator services calls from pay telephones, hotels, and other public locations against unreasonably high rates and anticompetitive practices."[6] To this end, TOCSIA required OSPs, *inter alia,* to: identify themselves and provide their rates

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[5] Telecommunications Research and Action Center and Consumer Action v. Central Corporation, File Nos. E-88-104 thorugh E-88-108, DA 89-237, released Feb. 27, 1989.

[6] Telephone Operator Consumer Services Improvement Act of 1990, Senate Report # 101-439, 101st Cong, 2d Sess. at 1. *See also* H.R. Rep. No. 213, 101st Cong. 1st Sess. 2 191989) ("The purpose of [the Act] is to protect telephone consumers against unfair prices and practices of some operator service providers (OSPs), yet allow the legitimate companies in the industry the opportunity to compete in the market.")

to the consumer on request; withhold commissions from aggregators that block access codes; and file informational tariffs with the FCC.[7]

While the definition of operator services in TOCSIA, on its face, could be deemed to apply to all providers of operator services, the legislative history of TOCSIA makes clear that Congress intended for the term to apply only to the AOS companies and AT&T."[8] This, of course, made sense because the abusive rates and practices that spawned TOCSIA were limited to interLATA services. Indeed, intraLATA interstate services had not yet even been opened to presubscription competition so AOS providers could not at the time (and still cannot) provide 0+ interstate intraLATA services.

The informational tariff filing requirement likewise was narrower than the words of the statute might facially imply. Thus, as the Commission has recognized, the legislative history of TOCSIA makes clear that Congress meant for this requirement to apply only to carriers who were treated as nondominant under Commission rules and who were, at the time, otherwise subject to the Commission's tariff forbearance policy.[9]

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[7] As initially introduced, TOCSIA would have also required the FCC to review the rates of OSPs and to require OSPs to demonstrate that their rates were just and reasonable and cost-based. At a congressional hearing, however, an FCC representative testified that it would be terribly burdensome for the Commission to examine the costs of each OSP and that any such examination would not necessarily result in lower OSP rates, insofar as OSPs' costs may be greater than those of AT&T. Based on this testimony, Congress decided to rely solely on informational tariffs, unblocking and disclosure requirements to check OSP abuses. *Id* at 21.

[8] *Id.* at note 3.

[9] *Id.* at 20. *See also National Telephone Services, Inc. Petition for Declaratory Ruling that the Untariffed Payment of Commissions by Dominant Carriers to Customers Violates Section 203 of the Act,* Memorandum Opinion and Order, 8 FCC Rcd 654 (1993) at note 15: "TOCSIA's legislative

In 1991, the Commission adopted rules and regulations to implement TOCSIA. Those rules, which remain in effect today, require OSPs, *inter alia*, to provide an audible identification prior to completion of a call and before any charge is incurred. They also prohibit aggregators from blocking access codes and OSPs from paying commissions to aggregators that fail to permit dial-around traffic. In addition, the rules require OSPs to provide rate quotes on request, and they require aggregators to disclose to consumers how to obtain such rate quotes. In adopting these rules, the Commission adopted verbatim TOCSIA's definition of operator services and operator service providers - and thus, arguably, the limitations that Congress meant to incorporate into those definitions.[10]

Although TOCSIA and the Commission's implementing regulations undoubtedly had a positive impact in the market, consumers continued to be victimized by high OSP rates for interLATA services. In particular, it appeared that many consumers did not understand that if they used a LEC calling card for an interLATA call, their call might be handled by an OSP with which their LEC had no affiliation. In addition, despite the posting, branding, and rate disclosure requirements, many consumers failed to protect themselves from

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history, however, makes it clear that the informational tariff filing requirement does not apply to dominant carriers such as AT&T."

[10] *See* 64 CFR § 708(g) and (i). *See also Policies and Rules Concerning Operator Service Providers*, Report and Order, 6 FCC Rcd 2744 (1991).

excessive OSP rates by dialing around high-priced OSPs, presumably because they found access code dialing to be burdensome and/or confusing.

It was largely for this reason that the Commission initiated this proceeding in 1992 by proposing a "billed party preference" routing methodology for 0+ interLATA traffic. Since under billed party preference, 0+ interLATA calls would be routed automatically to the IXC presubscribed to the billed line, billed party preference would have obviated the need to use access codes in order to avoid excessive OSP interLATA rates. In a 1994 Further Notice, the Commission estimated that, by enabling consumers to avoid the higher-priced OSPs, billed party preference could save consumers approximately $280 million per year in interLATA service charges.[11]

Despite these significant potential savings, the Commission was never quite convinced that the benefits of billed party preference outweighed its considerable costs. The Commission also was concerned that these benefits would diminish over time as consumers became more accustomed to using access codes from public phones.

As time passed, and no action was taken, some consumer groups became concerned. In February 1995, the Telecommunications Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General (NAAG) and the attorneys general of 23 states petitioned the

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[11] Billed Party Preference for 0+ InterLATA Calls, Further Notice of Proposed Rulemaking, 9 FCC Rcd 3320 at ¶ 11 (1994).

Commission to adopt disclosure requirements to protect consumers from excessive interLATA rates, pending implementation of billed party preference or as a substitute therefor. In seeking this interim or alternative relief, NAAG noted:

> [C]onsumers report that long distance calls made from public phones have resulted in charges of more than ten times the charge that a dominant carrier would have billed for the call. The failure of some OSPs to inform clearly prospective customers that charges will be many times greater than charges by dominant carriers for comparable calls is unfair and deceptive. Many callers, particularly those using their local or long distance carrier's calling card, believe that they automatically will be connected to their carrier when they make the calls on public phones.[12]

NAAG asked the Commission to require OSPs whose rates and connection fees and other charges are not at or below dominant carrier rates to so notify consumers before completing any 0+ call. The following month, an industry group, led by CompTel, filed a counter-proposal – which, like the NAAG proposal, would only have applied to OSPs that charged excessive rates (although the CompTel group took a more lenient view as to what was "excessive").

Significantly, neither the NAAG nor the CompTel proposal would have applied to intraLATA interstate rates. Neither proposal discussed intraLATA toll service, and neither suggested any benchmark for that service. Indeed, any

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[12] Petition of the National Association of Attorneys General Telecommunications Subcommittee for Rules to Require Additional Disclosures by Operator Service Providers of Public Phones, Feb. 8, 1995 at 2.

discussion of benchmarks for intraLATA interstate toll rates would have been nonsensical, since all such calls were handled by ILECs, whose rates were regulated and who, therefore, were not the source of the problem to which these petitions were directed. Indeed, to the contrary, as the above quote indicates, the problem was that consumers using a dominant carrier calling card *were not* necessarily being billed dominant carrier rates.

The Commission issued a public notice on these proposals, and then a Second Further Notice of Proposed Rulemaking. In that Second Further Notice, the Commission indicated that it would implement some form of disclosure requirement in lieu of billed party preference and seemed to conclude that this requirement would apply only to OSPs whose rates exceeded some benchmark. It stated: "Based on all of the comments we have received, we find that the record supports the conclusion that we should establish benchmarks, based on the reasonable expectations of consumers, for OSPs' interstate rates and associated charges that consumers must pay for operator services."[13] Moreover, although it asked, briefly (and, frankly, in perfunctory fashion), whether a price disclosure requirement should apply to all 0+ calls, it went on to devote the ensuing 22 paragraphs to discussing how benchmarks might be used to target OSPs with excessive rates. After considering various alternatives, the Commission tentatively concluded that "the most useful benchmark for

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[13] *Billed Party Preference for InterLATA 0+ Calls*, Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 7274 (1996) at para. 23.

protecting consumers against unexpectedly high OSP prices would be one set at a level approximating the average price charged by AT&T, MCI, and Sprint."[14]

In discussing the various benchmarking possibilities, the Commission referred, for the first time in this proceeding, to interstate, rather than interLATA, services. In switching terminology, however, the Commission made no mention of intraLATA toll services *per se*. To the contrary, all of the proposals discussed, including the proposal the Commission tentatively decided to adopt, were tied to the rates of "the three largest OSPs" - AT&T, MCI, and Sprint - thereby implying that the Commission was using the terms interstate and interLATA interchangeably. Presumably, if the Commission had intended to establish benchmarks for intraLATA toll service, it would have at least discussed the merits of using Bell operating company rates in the benchmark, since the BOCs were, and continue to be, not merely the largest providers of intraLATA interstate traffic, but the *default* providers of that traffic in their regions. The Commission, however, did not mention BOC rates at all, nor did the Commission even distinguish between the interLATA and intraLATA toll rates of AT&T, MCI, and Sprint. To put it bluntly, intraLATA toll service was not on the radar screen.

Despite the tentative conclusions of the *Second Further Notice*, and despite broad support from carriers and consumer groups for targeted disclosure

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[14] *Id.*

requirements, the Commission abandoned the concept of benchmarks in the *Second Report* and required, instead, rate quotes on all 0+ interstate traffic. Although this requirement is framed in terms that are broad enough to cover all 0+ interstate traffic, the Commission in no way suggested that it intended to apply this rule to intraLATA, as well as interLATA traffic, and it certainly did not purport to explain why such application would be appropriate or necessary.

III. ARGUMENT

A. The Commission Did Not Intend or Should Not Have Intended to Apply the Notification Requirements Adopted in the *Second Report* to IntraLATA Toll Services.

As this history makes clear, the Commission did not intend, or certainly should not have intended, to apply the notification requirements adopted in the *Second Report* to intraLATA toll services. From the inception of this proceeding in 1992 until the issuance of the *Second Report,* the Commission and all participating parties have focused exclusively on regulations governing the provision of *interLATA* services. Thus, the Commission explicitly limited its billed party preference proposal to interLATA 0+ traffic - a limitation that is reflected in the caption of this proceeding. Likewise, the NAAG and CompTel proposals, which laid the foundation for the disclosure requirement adopted in the *Second Report,* addressed interLATA services only, as did the *Second Further Notice,* which proposed benchmarks for interLATA service rates, but not intraLATA rates.

To be sure, the *Second Further Notice* contains a single paragraph in which, without any elaboration or discussion, the Commission asks, in the alternative, whether disclosure requirements should apply to all 0+ interstate traffic. In context, however, that inquiry appears simply to raise the issue of whether or not disclosure requirements should apply only to carriers whose interLATA rates exceed whatever interLATA benchmark was adopted, not whether such requirements should be expanded to encompass intraLATA, as well as interLATA services. Indeed, in abandoning its tentative conclusion in favor of this alternative proposal, the Commission explained itself only by discussing why benchmarks would be inappropriate; it in no way suggested any specific intent to extend disclosure requirements to intraLATA services.

This lack of discussion of intraLATA services in any phase of this six-year proceeding is telling. Presumably, if the Commission was actually contemplating an expansion of the scope of this proceeding to intraLATA services, it would have suggested that it was considering such a step and provided some ostensible rationale for it. It did not, and it should now clarify that this was not its intent.

Indeed, even if the Commission did intend in the *Second Further Notice* to propose an expansion of this proceeding to intraLATA services, the Commission did not adequately convey that intent. The only evidence of any such intent in the *Second Further Notice* is the use of the term "interstate," as opposed to "interLATA." Not only is that change in terminology completely unexplained, it

is also without consequence because, in its discussion of benchmarks in that Notice, the Commission used the term "interstate services" to describe what were, in reality, interLATA services. Thus, the shift in terminology from interLATA to interstate hardly presents anything close to adequate notice under section 553 of the Administrative Procedure Act of any intent to adopt rules governing intraLATA services.[15] That being the case, the Commission *must, as a matter of law,* hold that the *Second Report* does not apply to intraLATA services.[16]

Such clarification is warranted, not only as a matter of law, but as a matter of policy. As demonstrated above, the problems that have plagued the operator services industry during the past ten years were the direct result of entry into the industry by so-called AOS providers. More specifically, the problems and consumer complaints stemmed from the fact that: (i) competition in the industry was aggregator-focused, not consumer-focused; and (ii) the rates of these new entrants were unregulated.

None of that is true, however, of interstate intraLATA service. On the contrary, because BOCs were - and continue to be - the default providers of interstate intraLATA services, the commission-oriented, aggregator-focused

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[15] *See Public Service Commission of the District of Columbia v. FCC*, 906 F.2d 713, 717 (D.C. Cir. 1990); *National Black Media Coalition v. FCC*, 791 F.2d 1016 (2d Cir. 1986); *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983).

[16] Ameritech notes, further, that the term "OSP" is ambiguous. As shown above, the legislative history of TOCSIA clearly evidences Congress' intent to limit the term "OSP" to AT&T and so-called AOS providers - as opposed to LECs. Since the Commission has incorporated TOCSIA's definition of OSP into its rules, that same limitation presumably must be read into the Commission's use of the term. Since the regulations adopted in the *Second Report* apply to OSPs, it is not clear that those rules could be deemed to apply to LECs.

competition that has created so many problems in the interLATA marketplace, does not yet exist in the intraLATA marketplace. Moreover, because, unlike interLATA service providers, the BOCs continue to be treated as "dominant" carriers in their provision of intraLATA interstate services, their rates for those services are constrained by price cap ceilings. This form of direct rate regulation obviates any need for alternative measures to protect consumers from excessive rates.

The Commission has recognized in virtually every order since enactment of the 1996 Telecommunications Act that the purpose of that Act was to establish a procompetitive *deregulatory* national policy framework. The *Second Report* itself cites this mandate.[17] Surely, the Commission could not reconcile this mandate with a requirement that LECs adhere to the disclosure requirements of the *Second Report* in their provision of services that already are subject to price cap regulation. Far from being deregulatory, any such requirement would epitomize excessive regulation.

B. Application of the *Second Report* to IntraLATA Service Would Be Anti-Competitive in Effect.

Not only would application of the *Second Report* to intraLATA services be unnecessary (and at odds with the Administrative Procedure Act), it would also undermine the Commission's pro-competitive goals and policies. Under section 251(b)(3) LECs must provide nondiscriminatory access to operator services by

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[17] *Second Report* at para. 6.

competing providers.[18] In addition, the Commission has held that operator services are network elements to which ILECs must provide access on request where technically feasible. Moreover, under section 251(c)(4), ILECs, such as Ameritech, must offer for resale its retail telecommunications services - including its intraLATA services - at wholesale rates. Through the operation of these provisions, other telecommunications carriers currently use Ameritech operators to provide their own 0+ intrastate intraLATA service in Michigan, Illinois, and Wisconsin. When dialing parity is implemented for intraLATA interstate service (after Ameritech obtains section 271 authority) CLECs also will use Ameritech operators to originate 0+ interstate intraLATA traffic.

If the Commission holds that the *Second Report* does, indeed, apply to intraLATA interstate services, Ameritech could only comply with the disclosure requirements adopted therein by instructing callers to press "0" for rate information and then routing the call to a live operator. Ameritech is not technically capable of providing rate quotes on an automated basis and has been informed by its operator service switch vendor that the software necessary to implement this capability would cost tens of millions of dollars and take a considerable amount of time to develop, test, and implement. It is thus not a viable or cost-effective option, particularly given that only about one percent of Ameritech's 0+ traffic is intraLATA interstate.

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[18] *See* 47 U.S.C. § 251(b)(3). *See also* 47 CFR § 51.217.

Because, however, Ameritech operators handle 0+ traffic initiated, not only by Ameritech customers, but by the customers of other carriers as well, Ameritech's operators cannot comply with the rate disclosure requirements of the *Second Report* unless they know the identity of the carrier being used by the customer placing the call; otherwise, Ameritech operators would end up quoting Ameritech rates to the customers of Ameritech's competitors.

Ameritech operators do not currently have this information unless the call is received on a dedicated trunk group. Thus, in order to comply with the requirements of the *Second Report* Ameritech operators would have to ask callers seeking rate information to identify their carrier. Even then, Ameritech operators still would not be in a position to provide rate information to the customers of carriers who use Ameritech operators to provide their own services because Ameritech is not privy to the retail rate structures of those carriers. In order for those carriers to comply with the requirements of the *Second Report*, they would thus either have to provide Ameritech with rate tables or instruct Ameritech operators to transfer callers to some other number. Either way, the carrier is effectively penalized: in the first, instance, it would have to provide sensitive rate information to its competitor, in the second, it would effectively be prevented from providing a rate quote service that is at parity with that of the ILEC. Indeed, if a caller is transferred from a LEC operator back to the carrier, the carrier's representative would have to re-solicit all relevant information (*e.g.*, the dialed number) from the caller, and then, if the caller wished to place the call

after receiving such information, the caller would have to hang up and re-dial. Given that process, the caller would have been better off simply making a separate call to the 0+ carrier in the first place.

This problem is not merely a future problem that will arise only after dialing parity is implemented for interstate intraLATA traffic. It would exist from the start in areas where Ameritech (and other LECs) have implemented intrastate intraLATA dialing parity. That is because Ameritech's operator switches (which are used by a number of other LECs as well) cannot currently separate interstate intraLATA traffic from intrastate intraLATA traffic for purposes of informing customers how to obtain a rate quote. Thus, in order to comply with the *Second Report*, Ameritech would have to provide the required notification on all intraLATA 0+ calls, including intrastate intraLATA calls emanating from areas with intraLATA toll dialing parity. In those areas, the required announcement would be heard, not only by Ameritech's own customers, but by the customers of other carriers that use Ameritech operator services. Thus, to the extent a customer sought rate information in response to the announcement, Ameritech operators would not know whose customer it was, or what rate should apply.

For this reason, and the reasons cited above, the Commission must clarify or revise the *Second Report* by holding that the requirements established therein do not apply to intraLATA services. Indeed, to the extent the "reseller problem" discussed above extends beyond LECs to the interexchange industry,

as well, it may be necessary for the Commission to rethink this requirement, even as applied to interLATA services.[19]

C. To the Extent the Commission Retains the Disclosure Requirements of the *Second Report*, It Should Clarify That Those Requirements do not Require Disclosure of Surcharges or PIFs For Which A Carrier Does Not Bill or Which Are Not Expressly Authorized by Contract.

To the extent the Commission retains the disclosure requirements of the *Second Report*, it should clarify that those requirements do not require disclosure of surcharges or PIFs for which a carrier does not bill or which have not been expressly authorized in a presubscription contract between the carrier and the aggregator. This clarification would be useful because the *Second Report* is not entirely clear and could be construed to require disclosure of any surcharge or PIF assessed by an aggregator, regardless of whether the OSP has expressly or implicitly permitted such charges through contract or by billing for them. Thus, for example, while paragraph 24 states "[o]ur information disclosure rules . . . require a nondominant OSP to disclose only such aggregator surcharges and PIFs, if any, that it has permitted in the applicable PIC agreement with an aggregator," paragraph 19 appears to require disclosure of "the specific applicable surcharge, or the maximum surcharge that could be billed at that aggregator location."

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[19] Counsel for Ameritech notes that he uses a reseller of Sprint long-distanace service at his home telephone. On the night of April 8, counsel dialed 00 and asked the Sprint operator whether she could identify the reseller he was using or provide rate information on behalf of that reseller. The operator responded negatively to both inquiries.

To the extent the Commission did not intend to limit this requirement to disclosure of actual or maximum PIFs which an OSP has authorized through contract or by billing, Ameritech can say unequivocally that it cannot comply with this requirement. In rejecting arguments that any disclosure requirement should not extend to surcharges or PIFs, the *Second Report* states: "Only PIFs that an OSP has specified or permitted in its PIC agreement with a particular aggregator must be reflected in such tariffs. Our information disclosure rules similarly require a nondominant OSP to disclose only such aggregator surcharges and PIFs, if any, that is has permitted in the applicable PIC agreement with an aggregator."[20] Ameritech, and other LECs, however, do not file section 226 tariffs; they file section 203 tariffs, which do not include surcharge or PIF information. Moreover, Ameritech does not, as a general matter, offer intraLATA toll service to aggregators pursuant to contracts, much less contracts that purport to address permissible surcharges and PIFs. On the contrary, Ameritech is the default carrier for intraLATA toll interstate traffic; it provides its service under tariff, not individually negotiated contracts. Thus, in order to comply with the Commission's requirement, Ameritech would have to canvass every single aggregator in LATAs that cross state lines in order to determine what, if any, surcharges or PIFs they impose. That is obviously not practicable.

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[20] *Second Report* at para. 24. This reference to "nondominant OSPs" would appear to corroborate Ameritech's belief that the *Second Report* does not apply at all to intraLATA interstate 0+ services (which are provided only by dominant carriers).

Nor is Ameritech in a position to know the surcharges that other carriers might apply to a call. For example, if a caller places an intraLATA interstate call over Ameritech's network and bills that call to a third number, the LEC serving that third number might impose its own billing surcharges. The same would be true if the call were billed to, for example, another LEC's calling card. Ameritech could not possibly be in a position to know the surcharges that might be assessed by the hundreds of LECs throughout the country. It does not bill these surcharges, nor does it have contracts with each and every LEC that address these matters.

In an *ex parte* meeting, Commission staff suggested that Ameritech could tariff a surcharge and PIF limitation. Wholly apart from whether it would be reasonable for Ameritech, as the default intraLATA interstate carrier, to select arbitrarily a maximum permissible surcharge or PIF for all aggregators in the Ameritech region, and for all LECs that perform billing functions on a call, Ameritech would certainly not be in a position to enforce any such limitation as to entities that have not agreed to such limitations. Indeed, it is likely that many aggregators and carriers would simply refuse to comply with such a limitation; thus, Ameritech would find itself in a position of providing false assurances to consumers.

Ultimately, if the Commission believes that surcharge and PIF ceilings are appropriate, then the Commission should impose them. It is not up to

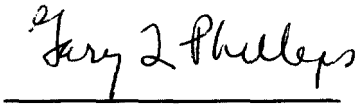
Ameritech and other LECs to do the Commission's work, particularly since that would be a recipe for chaos, with each LEC purporting to set policies for every other LEC, not to mention all of the aggregators in their territory.

For these reasons, if the Commission retains any disclosure requirement that would apply to Ameritech (which, for the reasons noted above, it should not), it should clarify that carriers are required to quote only actual or maximum surcharges or PIFs for which they bill or which they have expressly authorized in an aggregator contract.

IV. CONCLUSION

For the reasons stated above, the Commission must clarify or hold on reconsideration that the *Second Report* does not apply to intraLATA interstate services. If the competitive concerns identified above apply in the interLATA market, as well as the intraLATA market, the Commission should vacate the decision, and issue another Further Notice to consider whether an alternative remedy should be adopted, or whether the continued acceptance of access codes has obviated the need for any further measures.

Respectfully Submitted,



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